

APR 15 1997

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

J. Baron Groshon, Clerk
By: EDC
Deputy Clerk

In Re:)	Case Nos. 92-10418
)	92-10427
PETER VITALIE COMPANY, INC.,)	
)	Chapter 11
Debtor)	
and)	
STERLING BILLIARD COMPANY, INC.,)	JUDGEMENT ENTERED ON APR 15 1997,
)	
Debtor.)	

ORDER DENYING MOTION TO COMPEL PAYMENT OF CLAIM

This matter is before the court on the Motion to Compel Payment of Claim filed by the National Labor Relations Board ("Board"). The court held a hearing on the Motion and has considered the parties' papers and arguments. From these, the court has concluded that the Motion should be denied. In support of that conclusion, the court makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

FINDINGS OF FACT

1. In July 1992 debtors Vitalie and Sterling filed Chapter 11 petitions.
2. In September 1993, this court approved the debtors' Plan of Reorganization. The debtors' Plan provided for satisfaction of the claims of five former employees (represented by the Board) by the execution of promissory notes. Specifically, the Plan provided for these claims as follows:

The NLRB claims for five (5) former employees of the debtors shall be paid in the amount of \$45,000.00 in this class. Payments will be made payable directly to each former employee, but shall be mailed to the NLRB as the employees' statutory agent, and thereafter distributed by the NLRB to the employees.

Order dated September 21, 1993, "Class 4."

3. According to the Plan, "Payment of claims shall begin the first full quarter after substantial consummation (which normally occurs within 60 days of confirmation of the plan)..." The debtors have made several payments on the notes issued to the Board claimants. The Board has since notified the debtors of what the Board believes to be the debtors' subsequent default on these notes.

4. The Board's Motion seeks to enforce payment of the promissory notes.

5. Other provisions of the confirmed Plan which bear on this matter include the following:

(a) Jurisdictional provision:

...subject to the debtors being so revested with their assets, the Court will retain jurisdiction until the plan has been fully consummated, for adversaries or other matters pending post-confirmation, or as otherwise indicated in this plan or confirmation order.

Order dated September 21, 1993, "PROVISO."

(b) Remedy provision:

In the event that the debtors shall default under the terms and conditions of this plan, the creditor hereunder affected by the default may pursue its normal legal bankruptcy or nonbankruptcy remedies.

Order dated September 21, 1993, "Remedy of creditors in event of

default."

CONCLUSIONS OF LAW

6. The extent of post-confirmation jurisdiction has been an issue on which bankruptcy courts have often differed. While it is clear from 28 U.S.C. § 1334 that a bankruptcy court's jurisdiction continues on after confirmation, the real issue becomes whether the court should chose to exercise this jurisdiction. Abstention may be appropriate where the matter at issue is better left to another court. 8 COLLIER ON BANKRUPTCY ¶ 1142.04[1] (15th ed. 1996). "After confirmation, the plan essentially functions as a contract between the debtor and the other entities affected by the plan and there is nothing amiss in a nonbankruptcy court interpreting the provisions of the plan." *Id.* ¶ 1142.04[2].

7. Although there are many cases to be found that exercise extensive post-confirmation jurisdiction (including those early decisions of this court), the court believes that this is not the proper course. Bankruptcy is not a cradle to grave process. As one court has said, "Since the purpose of reorganization clearly is to rehabilitate the business and start it off on a new and to-be-hoped-for more successful career, it should be the objective of courts to cast off as quickly as possible all leading strings which may limit and hamper its activities and throw doubt upon its responsibility." *North American Car Corp. v. Peerless W&V Mach. Corp.*, 143 F.2d 938, 940 (2d Cir.1944). The same court also noted that by confirming a plan of reorganization, a bankruptcy court

does not guarantee that the plan will be carried out. *Id.* at 666. Thus, while a bankruptcy court's jurisdiction continues post-confirmation to protect the confirmation decree, it clearly is not limitless.

8. In *Matter of Leeds Bldg. Products, Inc.*, 160 B.R. 689 (Bankr. N.D. Ga. 1993), the court stated that it "does not lose all jurisdiction once a chapter 11 plan has been confirmed," but that "its role is limited to matters involving the execution, implementation, or interpretation of the plan's provisions, and to disputes requiring the application of bankruptcy law." *Id.* at 691. In that case, as here, the debtor defaulted on payment of a note and the trustee sought to collect by an adversary proceeding. The court found that by executing the note, the debtor had implemented the relevant plan and that there was no question as to the plan's interpretation, leaving no issue within the bankruptcy court's limited jurisdiction.

9. Very similarly, under the facts of this case the Plan, at least insofar as it concerns the Board, has been carried out. The Plan itself was confirmed and consummated more than three years ago. In accordance with the requirements of the Plan, promissory notes were issued to the five employees and payment was begun. The start of payments meant substantial consummation had occurred ("Payment of claims shall begin the first full quarter after substantial consummation..."). Thus, the terms of the Plan were

completed as to the Board and the employees.

10. While the Plan's remedy section allows the Board to pursue either bankruptcy or non-bankruptcy remedies, in this situation there are no bankruptcy remedies necessary. The promissory notes issued to each of the five former employees represented by the Board have already been executed and delivered. This comprises the transfer of property required to consummate the Plan. Any dispute now creates a claim that should be prosecuted in state court. Any breach of the obligations entailed in the notes would not affect the Plan itself, as its terms have been carried out. The Board's motion does not concern the execution or implementation of the Plan, or the interpretation of its provisions, and does not require the application of bankruptcy law.

11. Although the Plan contains a jurisdiction clause that contains "full consummation" language, the court concludes that this clause is not designed for dealing with the performance of the Plan itself, but rather for other matters related to obtaining consummation of the Plan.

12. For the foregoing reasons the court has concluded that the Board may not seek to enforce payment of promissory notes issued pursuant to the debtors' Plan by way of this motion in the debtors' bankruptcy cases. Adequate nonbankruptcy remedies exist and are the appropriate means to resolve the Board's claims.

It is therefore **ORDERED** that the Motion to Compel Payment of
Claim is hereby **DENIED**.

Dated: April ¹¹~~8~~, 1997

George R. Hodges

George R. Hodges
United States Bankruptcy Judge